THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

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WRIT PETITION NO : 4808 of 2004

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Dated: 02-08-2005

Between:

M/s.Tilak Enterprises, Vijayawada,

rep.by its Managing partner,S/o.Late K.S.R.K.Prasad,
R/o.D.No.29-16-5, Gopalreddy Road,
Vijayawada-520002.

..... PETITIONER

AND

Church of South India Trust Association,a Comp.Reg.under the Indian

Companies Act with its Reg.office at Chennai,
Hon.Treasurer of Church of South India Trust Association, No.5, Whites

Road, Royapettah, Chennai, and others.

.....RESPONDENTS

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ORDER:

1. Church of South India Trust Association (first respondent) who is the owner of about 7000 sq.mts. of vacant land in New Town S.No.771/1 and 2 at Vijayawada, sought for and obtained exemption in respect of the said land from the provisions of the Urban Land (Ceiling & Regulation) Act, 1976 ('the Act') on the ground that it is a non-profitable organization running several Educational Institutions, Hospitals, Orphanages and places of worship at several places, and subsequently made an application to the A.P.State Government (2nd respondent), Collector, Krishna District (3rd respondent), and Vijayawada, Guntur, Tenali and Mangalagiri Urban Development Authority (for short 'the Authority') (4th respondent) for conversion of that area from semi public to public use. On the recommendations made by the third and fourth respondents, second respondent issued G.O.Ms.No.179/MA, dated 07.04.2003, permitting the first respondent to use the said land for commercial purpose and so the Municipal Corporation of Vijayawada (fifth respondent) had on 20.08.2003 accorded permission to the first respondent to construct a shopping complex in the said land. Petitioner filed this petition questioning the said permission granted by the first respondent.

2. The case of the petitioner is that since first respondent obtained exemption from the 2nd respondent in respect of the land belonging to it from the operation of the provisions of the Act, by invoking the provisions of Section 19(1)(iv) of the Act, on the basis that that land is required for charitable or religious purposes, it ought not have been granted permission, by the very same second respondent, to use the said land for construction of a shopping complex, which by no stretch of imagination can be said to be a charitable or religious purpose, and in any event 5th respondent was in error in according permission to the first

respondent to construct a commercial complex, when no clearance certificate under the Act, as required by Section 429(1)(aa) of the Hyderabad Municipal Corporations Act, 1955 (1955 Act) was furnished by it. It is his contention that first respondent giving an advertisement in a Telugu daily newspaper dated 27.08.2003, inviting applications for lease, when it was actually accorded permission by the 5th respondent to construct the complex on 20.08.2003 clearly establishes that it had already completed the construction of the commercial complex even before it was accorded permission to construct a commercial complex, and thus collusion between respondents 1 and 5 is apparent. It is his contention that

5th respondent while considering the application of the

1st respondent clearly overlooked the fact that the Principal Secretary to Government, Minorities Welfare Department, had, through his letter dated 22.10.2000, directed the third respondent to keep all the applications of the first respondent pending.

3. The case of the first respondent is that as a charitable organization, running primary schools, hospitals, old age houses, orphanages and places of worship, it had leased out 2000 sq.yards of its land for 30 years to the petitioner who constructed a two-storied building and let it out for commercial purpose to others, and had committed default in payment of rents due to it and after coming to know that it is contemplating to take action against him for appropriate reliefs for the default committed by him, filed this petition with a view to forestall its action. Since it is the absolute owner of 7302.19 square meters of vacant land, in New Town S.No.771/1 & 2 at Vijayawada it had, after obtaining exemption from the provisions of the Act in respect of that land, made an application to convert it from semi public to public use and later to commercial use and only after it was accorded permission by the second respondent did it make an application for construction of a shopping complex therein, to augment its resources for running the various charitable and religious institutions and inaugurated the complex in

October 2002, and since there is a condition that it should obtain a no objection certificate from the third respondent before it executes lease deeds in favour of tenants, it made a request to the third respondent to issue a no objection

certificate, but the same is not issued to it in view of this petition and since it did not violate the provisions of any law, and did not play any fraud, petitioner is not entitled to any relief.

4. No counter or counter affidavit is filed on behalf of second respondent.

5. The case, in brief, of the third respondent is that, while considering the application of the first respondent for construction of a commercial complex, he, after obtaining reports of the Mandal Revenue Officer and Revenue Divisional Officer and the Commissioner of the fifth respondent, sent his report to the second respondent, and since no objections were received for the draft variation of the Master plan within the time stipulation, a notification permitting the change of use of the land for commercial purpose was issued by the Government, and since petitioner did not oppose the construction made by the first respondent earlier, it is not entitled to any relief.

6. No counter or counter affidavit is filed on behalf of the fourth respondent.

7. The case of the fifth respondent, in brief, is that first respondent, which is a charitable organization, is running several Educational Institutions, Hospitals, Orphanages etc. and since the property is New Town S.No.771/1 & 2, belonging to the first respondent, was permitted to be used for commercial purpose vide G.O.Ms.No.179 MA, dated 07.04.2003, basing on the documentary evidence produced by the first respondent, it accorded permission to construct shopping complex with ground and first floors vide orders dated 20.08.2003, since permission for construction of a ground floor in 1999, and permission for construction of first floor for the purpose of a community hall was granted to it earlier in 2001.

8. Learned Standing Counsel for the 5th respondent, on my direction, produced the file relating to approval of the plan for construction of the building in the site

belonging to the

1st respondent. It shows that 1st respondent had on

13-05-1999 sought permission from the 5th respondent to construct offices and community halls. That plan, which was approved on 03-07-1999, shows that the building to be constructed, in a plinth area of 2070.4801 sq.mt. in a total site of 7417.8511 sq.mts., was meant to be used as treasurer's office, meeting hall, community hall and secretary's offices in two rooms and that, on 10-04-2001,

1st respondent sought for permission to construct a 1st floor, for housing its offices and community halls, with some divisions in the ground floor area, through a separate plan. Both the plans were approved on 23-07-2001 on a condition that the building should not be used for commercial purpose.

On 23-07-2003 1st respondent submitted a revised plan seeking permission to convert the existing ground and

1st floors for commercial use. The note file shows that

1st respondent was prosecuted for violation of the zoning regulations earlier, in STC No.95 of 2002 and was convicted by the VIII Metropolitan Magistrate, Vijayawada, and that its security deposit of Rs.4,06,000/- was also forfeited, but inasmuch as the first respondent permitted use of the land for commercial purpose, its revised plan was approved on

20-08-2003. In view thereof, it cannot, prima-facie, be said that there is any lapse on the part of the 5th respondent.

9. The contention of the learned counsel for the petitioner that inasmuch as the provisions of Section 429(1)(aa) of the 1955 Act are not followed, 5th respondent ought not to have approved the plan submitted by the 1st respondent, cannot be accepted because the said Section 429 does not mandate the filing of all the documents mentioned therein along with the application for construction of the building. That section only empowers the Commissioner to issue a notice to the applicant to produce all or any of the documents mentioned therein for considering his application for construction of a building. Section 429(1)(aa) of 1955 Act relates to the power of the Commissioner to call for a copy of the title deed duly attested by a Gazetted Officer of the Government together with an urban land ceiling clearance

certificate or an affidavit referred to in Section 388 of that Act. As per Section 388 of the 1955 Act, in case the extent of land exceeds the ceiling limit, the applicant has to produce a copy of the title deed duly attested by a Gazetted Officer of the Government along with the ceiling clearance certificate, and if the land does not exceed the ceiling limit, an affidavit swearing the fact that the total extent of land held by him and his spouse and unmarried minor children does not exceed by ceiling limit. It is an admitted fact that 2nd respondent exempted the land of the petitioner from the provisions of the Act, and that a part of the said land was let out to the petitioner under a registered lease deed dated 12-08-1986. In fact, a copy of the said lease deed is filed by the petitioner as one of the material documents along with this petition. Since Section 388 of the 1955 Act applies to leases with a covenant permitting the lessee to construct a building, and since the lease deed in favour of the petitioner permits it to erect a building in the demised land, and since the 1st respondent had earlier construed building therein, Commissioner of the 5th respondent-Corporation not calling upon the 1st respondent to produce the document referred to Section 429(1)(aa) of the 1955 Act has no consequence.

10. Be that as it may, the fact remains that inasmuch as the land of the 1st respondent is more than the ceiling area prescribed by the Act, it sought for and obtained an exemption in respect of that land under Section 19(1)(iv) of the Act, which is in chapter III of the Act. As per the said Section 19(1)(iv), provisions of Chapter III of the Act do not apply to vacant land held by any public charitable or religious trust (including wakf) and required and used for any public charitable or religious purpose. I would advert to this aspect a little later.

11. The contention of the learned counsel for the petitioner is that since construction of a shopping complex is neither a public charitable or religious purpose, the proceedings are liable to be quashed. It is also his contention that inasmuch as the 1st respondent even before the ink used by the authority for

affixing his signature on the sanctioned plan became dry, published an advertisement that the building is ready for occupation, establishes that the building was completed even before its plan is approved by the

5th respondent. On the other hand, the contention of the learned counsel for the

1st respondent is that since

1st respondent was permitted to construct the ground floor in 1999 and the 1st floor of the building was constructed way back in 2001, merely because 1st respondent issued an advertisement with the photograph of the existing building in which the alterations inside the building are approved, vide the permit impugned, does not mean that construction of the building was completed even before obtaining the sanction.

I find force in the contention of the learned counsel for the

1st respondent. For the reasons mentioned by the learned counsel, which are borne out by the record, merely because the advertisement issued by the 1st respondent has the photograph of the building, it cannot be said the building shown therein was completed even before granting of the permission impugned in this petition.

12. Significantly 2nd respondent who granted exemption to the 1st respondent and also permitted change of user of the land to commercial purpose, did not choose to file a counter or counter affidavit setting out the reasons for granting exemption and permitting the change of user. From the documents produced by the petitioner and the 1st respondent it is seen that in G.O.Ms.No.626 REVENUE (UC.I) DEPARTMENT, dated 08-07-1993 2nd respondent granted permission to the 1st respondent to lease out its premises to two persons, including the petitioner, with the following observation.

> 'The Special Officer and Competent Authority, Urban Land Ceilings, Vijayawada in his reports second and fourth read above has stated that the "Church of South India Trust Association" is a registered institution under the Indian Companies Act, 1913 having its registered office at Madras. The Church is holding 52,957.98 Sq.Mts. in Vijayawada. The Church Association can augment the capital to be utilized for

some other public utility for the upliftment of the down-trodden. The cause of application for grant of exemption to lease out the land is a bona fide one. The lessees have no other urban property. He has therefore recommended for grant of exemption to an extent of 5,000 Sq.yards (4187.52 Sq.Mtrs.) in NTS No.772/1 and 771 of Revenue Ward No.9, Block No.16, Municipal Ward No.29 of Vijayawada i.e. item 1 and 2 referred to in para 1 above.

The Government after careful examination held that a religious institution, as long as it enjoys the land held by it, is entitled to get the exemption Under Section 19(1)(iv) of the Act, that the lease is for 33 years and that the lessees may construct buildings etc., but the land and the buildings will revert to the lessor at the end of lease period; that the proposal for a lease but not for a sale; and that exemption can be given restricting the lease period only to 30 years, subject to the condition that the lease amount is to be utilized by the declarant i.e. Church of Sough India for "public purposes" only.

Therefore it is clear that 1st respondent is an institution registered under the Companies Act. There is nothing on record to show that 1st respondent is a public charitable or religious trust. The exemption contemplated by Section 19(1)(iv) of the Act is qua the property i.e., the land, and it and has no relation to the income being derived therefrom. For analogy, I feel it relevant to mention that Section 88 of the A.P. Municipalities Act (the Municipalities Act) which inter alia provides that buildings being used for educational purpose, and as choultries etc., are exempt from property tax. When a question whether the rent being derived from a building is being spent exclusively for educational purposes, though the building itself is not being used for educational purposes, can be exempted from property tax in view of Section 88(1)(c) of the Municipalities Act, came up for consideration, a learned single judge of this Court in ***THE TENALI MUNICIPAL COUNCIL v. TENALI SRI KANYAKA PARAMESWARI VYSYA VIDYANIDHI COMMITTEE*** held that in order to claim exemption from property tax as per Section 88(1)(c) of the Municipalities Act, the 'building itself' should be used for educational purposes, and when the building itself is not being used for educational purposes, but the income derived therefrom only is used for educational

purposes, no exemption can be granted to such building under Section 88(1)(c) of the Municipalities Act. Similar view was taken by another learned judge of this Court in ***A. GANGA RAJU CHOULTRY v. MUNICPAL COUNCIL, PALKOL*** (S.A.No.209 of 1974 dated 24-10-1975) in respect of building of a choultry, by holding that if the income from the building, but not the building itself, is being used for a charitable purpose, such building cannot be exempted from property tax, by following the judgment of a Division Bench of this Court in ***ANJANEYULU v. ELURU MUNICIPALITY*** where it is held that when the building itself is not being used as choultry but the rent being derived from it is being used for charitable purpose, such building is not entitled to exemption under Section 88 of the Municipalities Act. If the same analogy is extended to interpret Section 19 of the Act, it is clear that in order to claim exemption under Section 19(1)(iv) of the Act the land itself must be used for any public charitable or religious purpose by the public or religious trust for claiming exemption under the Act and merely because the income from the land is intended to be used for a charitable purpose, such land cannot be exempted from the operation of the Act.

13. The above view taken by me is also supported by the ratio in ***RAIZUR REHMAN KHAN AND OTHERS v. STATE OF U.P. AND OTHERS***, because in para 6 of the said decision at page 250, it is held:

> "but the proviso very clearly adds a rider that such exemption shall apply only so long as such land continues to be required and used for such purpose by such Trust. The emphasis is that vacant land which is sought to be retrieved from the provisions of the Ceiling Act, must be "required and used" for any public, charitable or religious purposes. It would, thus, be obligatory on the Trust or the waqf, as the case may be, to plead and establish that such vacant land has been kept "required and used" for such of the purposes as mentioned therein and claim for exemption cannot be laid merely on the footing that such vacant land is precious or likely to fetch some income, if put to proper use. At the same time, it is to be understood that if such land is otherwise income-giving, other than agricultural, then it is out of the scope of sub-clause (iv) of Section 19 as such purpose cannot be termed as a public, charitable and/or religious purpose."

In ***KAMLABAI MOHANLAL MANIAR v. SHRI V.N. KARANDIKAR AND OTHERS*** a Division Bench of Bombay High Court at page 455 held:

> "Therefore exemption contemplated by s. 19 (iv) is available qua vacant lands hold by any public charitable or religious trust and it the said land is required and used for any public charitable or religious purposes."

Therefore it is clear that merely because the income from the building to be constructed on a land is intended to be used for a public charitable and/a religious purpose, when the vacant land itself is not being used for such purpose, it cannot be exempted from the operation of the provision of the Act. In fact a Division Bench of Calcutta High Court in ***SPECIAL SECRETARY, GOVERNMENT OF WEST BENGAL v. STATE BANK OF INDIA AND OTHERS*** held that a private trust, that is, a trust which is not public charitable or religious trust is not entitled exemption even though such land is held by a Bank.

14. In these circumstances, Government granting exemption and allowing the amendment to the master plan to make the building suitable for commercial purpose, is but contrary to Section 19(1)(iv) of the Act.

15. Since the order granting exemption and permitting user of the building for commercial purpose is contrary to the Act, I am of the considered opinion that the order of the

5th respondent granting permission to use the building for commercial purpose and for altering the master plan to make it suitable for commercial use, are contrary to the provisions of the Act and so those orders are liable to be and accordingly are set aside. The petition is ordered accordingly. No order as to costs.

02-08-2005

VS/MJL/**LSK**